

# Attachment 1

# Congress of the United States

Washington, DC 20515

March 23, 2010

## Via Hand Delivery

Richard Westling, Esq.  
Ober Kaler Grimes & Shriver  
1401 H Street, N.W. Suite 500  
Washington, D.C. 20005

Re: Impeachment of Judge G. Thomas Porteous –  
Exhibit List and Exhibits

Dear Mr. Westling,

We look forward to working cooperatively with you to ensure that the proceedings in the Senate may proceed expeditiously and without unnecessary delay. To that end, this is the first of what is likely to be several letters we will be sending you to address the trial preparation process.

Enclosed please find an Exhibit List that lists the documents (including transcripts and other materials) cited in the Committee Report as well as other exhibits that have been marked in anticipation of their potential use at trial. Also, please find a disc that contains electronic copies of all of the exhibits on the list. If additional exhibits are identified for use at trial, we will mark them and provide you copies.

The exhibits on the disc have been redacted to delete reference to personal identifying information (such as social security numbers) and, in some instances, to delete references to third parties. We will make available for your inspection the original unredacted materials at your request.

In addition, the House, through the Committee on the Judiciary's Impeachment Task Force, has obtained materials that were not marked as exhibits and have not been copied. These generally include:

- Financial records, such as Judge Porteous's personal bank records, IRA records, various credit card records, and certain gaming records, of Judge Porteous. These records were originally obtained by the Department of Justice, and the Task Force obtained them either from the Fifth Circuit or from the Department of Justice.
- Financial records, such as credit card statements and business records, for some of the witnesses. These were originally obtained by the Department of Justice.

Page 2 of 2

- Other materials obtained from the Fifth Circuit or third parties.

It appears that the bulk of these records were made available to Judge Porteous in connection with the Fifth Circuit proceedings.

These materials are available for your inspection and copying upon your request. If you wish to review these materials, please contact Mark H. Dubester, 202-226-2404, or Harry Damelin, 202-226-0144, to arrange a time to review them.

Sincerely,

The signature is handwritten in cursive and includes a circled "AP" or similar initials at the end.

Alan I. Baron  
Special Impeachment Counsel

Enclosures

# **Attachment 2**

# Congress of the United States

Washington, DC 20515

May 11, 2010

Richard Westling, Esq.  
Ober Kaler Grimes and Shriver  
1401 H Street, N.W. Suite 500  
Washington, D.C. 20005

## Re: Impeachment of Judge G. Thomas Porteous - Discovery

Dear Mr. Westling,

This letter responds to your letter of May 6, 2010.

As you know, there are no formal "rules" that provide for discovery in an impeachment trial. Nonetheless, consistent with precedent, the House takes the position that it is appropriate that the House provide the following materials: 1) any tangible evidence the House Managers intend to use at trial; 2) any sworn or adopted statement of a witness to be called at trial; 3) transcripts or substantially verbatim statements of witnesses who will testify at trial; and 4) any exculpatory evidence. The House has in fact provided materials (as well access to inspect materials) that exceed those categories, and exceeded the discovery it provided in the Hastings and Nixon proceedings. It has done so, not because Judge Porteous is entitled to these materials, but rather in order to avoid unnecessary discovery disputes and to expedite the trial preparation process. It is against this statement of principles that we address your specific requests.

Paragraph 1. You are correct that some of the exhibits are excerpts from larger document collections. In the spirit of cooperation and in order to expedite the trial preparation process, we will make the entire document collections from which these records were selected available for inspection and copying, if you so desire.

Paragraph 2. As you have noted, certain of the exhibits have been redacted by the House and the Department of Justice (DOJ). You are free to inspect unredacted versions of the documents that the House redacted.

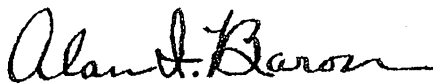
It is apparent that the bulk of the DOJ redactions – over which the House had no control – consisted of deleting identifying information as to witnesses, sources, and other materials that relate to persons other than Judge Porteous. There is nothing in the context of those documents that suggests that any redacted materials would be relevant to Judge Porteous's defense. In any event, the House has not had access to and will not use unredacted versions of these documents. Thus, the House cannot accommodate your request in this regard.

Paragraph 3. You have asked for "all of the materials the Committee reviewed as part of the investigation." This request is beyond the legitimate scope of discovery. Even a defendant in a criminal case where liberty is at stake is not entitled to replicate the investigation. Accordingly, we decline to produce materials responsive to this request.

In response to your request for information concerning depositions and other witness materials, we represent that all depositions have been produced. We decline to identify the names and identities of every person the House spoke to, where those individuals did not provide exculpatory information and will not be witnesses in this case. As stated previously, Judge Porteous is not entitled to replicate the House investigation.

If you have any questions, please do not hesitate to contact Mark H. Dubester, 202-226-2404, or, Harold Damelin, 202-226-0144, so we can discuss and try to resolve any issue you might have.

Sincerely,

A handwritten signature in black ink, reading "Alan I. Baron". The signature is fluid and cursive, with the first name "Alan" and last name "Baron" clearly legible. The middle initial "I." is written in a smaller, more formal script.

Alan I. Baron  
Special Impeachment Counsel

# **Attachment 3**

**Congress of the United States**  
Washington, DC 20515

April 13, 2010

The Honorable Claire McCaskill  
Chairman, Senate Rule XI Impeachment Committee  
United States Senate  
Washington, D.C.

The Honorable Orrin Hatch  
Vice Chairman, Senate Rule XI Impeachment Committee  
United States Senate  
Washington, D.C.

Re: Impeachment of Judge G. Thomas Porteous, Jr. – Preliminary Matters

Dear Senator McCaskill and Senator Hatch:

The purpose of this letter is to address the questions set forth in the March 31, 2010 email from Senate Legal Counsel Frankel relating to certain preliminary procedural issues in connection with the impeachment trial of Judge Porteous.

Pretrial Motions. The House may raise pre-trial motions regarding the following matters:

- Motion to admit as substantive evidence specific prior sworn testimony at the Fifth Circuit Special Investigative Committee Hearing [the Fifth Circuit Hearing] and at the House Impeachment Task Force Hearings where Judge Porteous or his counsel has either cross-examined the witness or has been provided the opportunity to do so;
- Motion to admit as substantive evidence the sworn testimony and other statements of Judge Porteous at the Fifth Circuit Hearing;
- Motion to admit certain documents into evidence, the authenticity and relevance of which are not in dispute. These would include, for example, court records (the curatorships, the Liljeberg proceedings, and the bankruptcy proceedings) or other similar documents. It is possible that this motion will be unnecessary, or will be limited in scope, depending on whether a stipulation can be reached with Judge Porteous's counsel on this topic;
- Motion to permit or admit expert testimony; and



- Motion relating to stipulations, if appropriate.

Stipulations as to the authenticity of documents. The House believes that the authenticity of the documents that are relevant to the impeachment trial is beyond real dispute. These documents generally consist of court records, transcripts, financial records, public records and certain business records. The House has already identified those documents which are likely to be used in the Senate trial (using the same exhibit numbers from the Report that accompanied the Impeachment Resolution), and has provided counsel for Judge Porteous a disc containing the documents and an exhibit list. By separate letter dated April 9, 2010, the House has requested that Judge Porteous stipulate to the authenticity of the documents on the exhibit list.

Stipulations as to facts. The House believes that a significant portion of the facts that are alleged in the Articles are uncontested or have been established beyond legitimate dispute. As an example, Judge Porteous has admitted to pertinent facts surrounding his relationship with attorneys Jacob Amato and Robert Creely – including his financial relationship with them prior to becoming a Federal judge, his handling of the Liljeberg case, his solicitation and acceptance of cash from Amato when the case was pending, and his acceptance of other things of value from Amato and Creely while the case was pending. Similarly, the essential facts surrounding Judge Porteous's handling of his personal bankruptcy are not in dispute. The House is in the process of preparing a number of proposed factual stipulations, and will soon be providing them to Judge Porteous's counsel for review.

Nonetheless, to expedite the stipulation process, the House suggests that at the time the Committee sets a motions schedule in this case, it direct each party to consider stipulations proposed by the other party. The House further suggests that "any proposed stipulation of fact [or as to authenticity] . . . be accepted as true unless the opposing party file[s] an objection which include[s] a proffer as to why the proposed stipulation of fact [or authenticity] should not be accepted as true."<sup>1</sup> The House urges that the Committee direct that this process be completed as of the date that responses to motions are due to be filed.

Evidence from prior proceedings. It is the position of the House that all the testimonial or documentary evidence that was admitted into evidence in the Fifth Circuit proceeding is admissible in the Senate trial. (As noted, the House may file a motion seeking to admit particular evidence in advance of the Senate trial.) At this point in time the House does not anticipate seeking to admit testimony or witness statements that have not been subject to cross-examination. The House cannot rule out the possibility that circumstances may arise where it would seek to have the Committee consider sworn prior recorded testimony or other statements of witnesses whose credibility had not been questioned or whose statements relate to facts not in

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<sup>1</sup>"Report of the Impeachment Trial Committee on the Articles Against Judge Alcee L. Hastings," S. Rept. No. 101-156, 101<sup>st</sup> Cong., 1st Sess. 169 (1989).

substantial dispute.<sup>2</sup>

Witnesses. The House may call the following witnesses. The nature of the testimony of the respective witnesses is generally described in the Report that accompanied the Articles of Impeachment. Depending on the nature of the cross-examination or the defense case generally, it is likely that it will not be necessary to call all of them, and, of course, it may be necessary to call other witnesses to address factual contentions that may be raised by the defendant. Those who sought immunity in connection with the House investigation are indicated.

#### Article 1

1. Robert Creely [Immunity]
2. Jacob Amato [Immunity]
3. Leonard Levenson [Immunity]
4. Donald Gardner
5. Joseph Mole
6. Rhonda Danos [Immunity]

#### Article 2

7. Louis Marcotte
8. Lori Marcotte
9. Ronald Bodenheimer
10. Bruce Netterville [Immunity]
11. Mike Reynolds
12. Jeffrey Duhon
13. Aubrey Wallace

#### Article 3

14. Claude Lightfoot
15. FBI Special Agent DeWayne Horner
16. FBI Financial Analyst Gerald Fink
17. Richard Greendyke

#### Article 4

18. Former FBI Agent Cheyanne Tackett
19. Former FBI Agent Robert Hamill

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<sup>2</sup>See, e.g., "Report of the Impeachment Trial Committee on the Articles Against Judge Alcee L. Hastings," S. Rept. No. 101-156, 101<sup>st</sup> Cong., 1st Sess. 170 (1989).

Length of the case-in-chief. The House believes it can put on its case-in-chief in 30 hours of direct testimony.

Other. On March 23, 2010, the House provided to Judge Porteous all the exhibits cited in the House Report, as well as other materials marked as exhibits and an accompanying Exhibit List. (In that the Report refers to matters such as procedural and litigation background that are not going to be part of the trial in this case, the Exhibit List contains numerous documents which will not constitute evidence at trial.) The House also made available other documents and records for inspection. Judge Porteous's attorneys have already made an initial review of these other documents. (A copy of the letter and Exhibit List is attached.)

A review of the Exhibit List provided to Mr. Westling reveals that there are virtually no materials with which Judge Porteous is unfamiliar. A significant portion of the documents on the Exhibit List were provided to Judge Porteous in connection with the Fifth Circuit Hearing or consist of testimony taken at that Hearing.<sup>3</sup> Other significant sets of records include: 1) various documents describing the procedural background in this case; 2) court documents with which Judge Porteous is personally familiar, such as the records from the Liljeberg case, over which Judge Porteous presided; and 3) documents consisting of the grand jury-related litigation in this case.<sup>4</sup>

Though the Committee on the Judiciary's Impeachment Task Force developed additional corroboration for certain of the allegations – such as by obtaining the curatorship orders issued by Judge Porteous to Robert Creely, obtaining records of bails set by Judge Porteous that benefitted the Marcottes, obtaining the orders by which Judge Porteous set aside convictions, or engaging in further analysis of Judge Porteous's financial records related to his bankruptcy – a review of the Articles demonstrates they set forth virtually no substantive allegation of which Judge Porteous and his attorney were not personally aware:

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<sup>3</sup>These include a substantial portion of Exhibits 11-49, relating to Amato, Creely, Gardner, Levenson and Danos; Exhibits 100-114, consisting of Judge Porteous's financial disclosure reports; Exhibits 120-124, consisting of the Lightfoot grand jury testimony; exhibits 124-149, consisting of various bankruptcy records; and Exhibits 301-343, consisting of casino records and a few other miscellaneous bankruptcy-related records.

<sup>4</sup>Exhibits 1-10 are background documents related to the procedural history of this case; Exhibits 50-68 are Liljeberg court records; Exhibits 400-436 are the litigation documents related to Judge Porteous's efforts to keep relevant materials from the House and Senate. In addition, Exhibits 150 through 200 generally consist of records related to Judge Porteous's seeking and acceptance of trips and gifts from various parties that are not charged in the Articles but are contained in the Report. Exhibits 200 through 300 are Depositions exhibits. Some of these are photographs (and some of the photographs include Judge Porteous), but many are duplicates of documents that were marked and listed in other places on the Exhibits List and include numerous exhibits related to matters not charged in the Articles.



We look forward to working with the Committee to expedite the proceedings in this case.

Sincerely,

A handwritten signature in black ink, appearing to read "Adam Schiff", written over a horizontal line.

Adam Schiff  
House Impeachment Manager

A handwritten signature in black ink, appearing to read "Bob Goodlatte", written over a horizontal line.

Bob Goodlatte  
House Impeachment Manager

cc: Morgan Frankel  
Senate Legal Counsel

Attachments



**Congress of the United States**  
Washington, DC 20515

May 13, 2010

**By Electronic and Regular Mail**

Richard Westling, Esq.  
Ober Kaler Grimes & Shriver  
1401 H Street, N.W. Suite 500  
Washington, D.C. 20005

Re: Impeachment of Judge G. Thomas Porteous—  
Initial Discovery Request

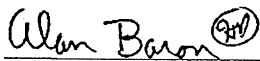
Dear Mr. Westling:

The purpose of this letter is to request certain discovery from Judge Porteous.

The House formally requests that Judge Porteous provide discovery of the following materials: 1) any tangible evidence Judge Porteous intends to use at trial; 2) any sworn or adopted statements from witnesses whom Judge Porteous intends to call at trial; and 3) transcripts or substantially verbatim statements of witnesses whom Judge Porteous intends to call at trial. These categories correspond to the categories of materials that the House has stated it will produce to Judge Porteous.

If you have questions, please contact Mark H. Dubester, 202-226-2404, or Harry Damelin, 202-226-0144.

Sincerely,

A handwritten signature in cursive script that reads "Alan Baron". To the right of the signature is a small circular stamp containing the letters "JW".

Alan I. Baron  
Special Impeachment Counsel

# **Attachment 5**











evidence of the matters described in categories two and four is granted.

The fifth category in the House motion in limine is cumulative evidence on Judge Hastings' general character and reputation. We agree with Judge Hastings that this portion of the House motion in limine is premature. We expect that Judge Hastings will be mindful of the limitations that the committee placed on the number of character witnesses, and the total length of character testimony, in the Claiborne proceedings, and that, in composing his witness list, Judge Hastings will recognize the need to avoid cumulative evidence. We can address at a later date any question which arises about the need to impose limits on that testimony.

#### Documentary Discovery

Third, Judge Hastings has moved for extensive pretrial discovery. He advocates that discovery be based on contemporary ideas about discovery in federal civil judicial proceedings. The House has proposed a scope of discovery that is modeled to a greater extent on federal criminal judicial proceedings. The House proposes to provide to Judge Hastings any exculpatory evidence that it possesses. The House also proposes that each party provide to the other party the documents that it proposes to offer in evidence, prior sworn, adopted, or approved statements of witnesses that each proposes to call, and substantially verbatim and

contemporaneously recorded statements of witnesses that each intends to call. The discovery proposed by the House should be completed as promptly as possible. We reject, however, the divergent theoretical limits -- expansive in Judge Hastings' view and constricted in the House's view -- that each side has advocated.

The House has expressed a concern about one House of Congress directing another House to produce records. We need not address at this time whether the Senate has that power in an impeachment proceeding, because we think that it should be sufficient to state principles and a schedule to guide these proceedings:

(a) To the extent that the parties have had a disagreement about photocopying, we recommend to the House that the issue be resolved in Judge Hastings' favor and that the House provide to Judge Hastings copies of all documents that the House has no objection to providing on the basis of their content. To facilitate Judge Hastings' response to the House's proposed stipulations, a matter that will be discussed below, the House should provide those copies by April 21, 1989, a week from today's order.

(b) The House -- which has proposed to provide exculpatory materials, certain prior statements of witnesses, and documents and other tangible evidence that it intends to introduce in evidence -- has indicated that it has provided

most but not all of that material to Judge Hastings. The House would like to defer further production until it receives equivalent material from Judge Hastings. We will be requiring comparable disclosure by Judge Hastings, but the production to Judge Hastings should not be delayed while that occurs. Again, because we will be requiring responses to the House's proposed stipulations, the House should provide this material to Judge Hastings by April 21.

(c) Concerning other documents, the sharing of information should be guided by a broader principle than that advanced by the House in its offer to provide exculpatory evidence and the prior sworn, adopted, approved, or substantially verbatim and contemporaneously recorded statements of witnesses. In addition to the interests of the House in its role as advocate for the articles of impeachment and the interests of Judge Hastings in defending against those articles, the Senate has an interest in the development of a record that fully illuminates the matters that it must consider in rendering a judgment that under the Constitution only the Senate may make. We therefore ask the House -- for documents that it has obtained from elsewhere in the government that are responsive to a particularized request from Judge Hastings -- to determine whether there are specific objections, such as the need to honor promised confidences to people who may be at risk, to production to

Judge Hastings. In the absence of specific objections by the House or by the governmental entity that provided the material to the House, which should be articulated in writing so that the parties and the committee may be apprized of them, the special constitutional process that we are now engaged in will be served best by the fullest disclosure possible. It may be that for some documents an appropriate course of action would be to provide them to the committee for an evaluation of their sensitive nature, if any, and a determination by the committee whether any restrictions should be placed on the terms of access to them. Again, because of the schedule that will be set forth below for responses to stipulations, the House should respond by May 3.

(d) Judge Hastings also has a burden that he has not yet met. It will be necessary for him to do more than simply demand everything that other people have. In order to facilitate the process that we are asking the House and the other branches to undertake, Judge Hastings should identify, with far greater particularity than he has to date, the records that are germane to issues in these proceedings. Also, if it would be of assistance to the holders of documents in determining their responses, he should articulate to them the basis for his requests. To enable the House to respond by May 3, Judge Hastings should submit his particularized requests by April 26.



(e) Neither the Department of Justice nor the counsel or the members of the Investigating Committee of the Judicial Council of the Eleventh Circuit are before us. If Judge Hastings has requests for documents from either the Department, including the Federal Bureau of Investigations, or the Judicial Council, he should promptly make particularized requests to them by April 26. With knowledge of the committee's interest in the fullest disclosure possible, we would appreciate knowing of the Department's and the Council's responses at the earliest possible time.

(f) Judge Hastings should provide his reciprocal discovery to the House by May 10, including all documents, tapes, and other tangible evidence he intends to offer in evidence, and sworn, adopted, approved, or substantially verbatim statements of witnesses that Judge Hastings intends to call.

#### Depositions

Fourth, Judge Hastings has asked that the Senate utilize its subpoena power to enable him to take depositions in advance of the committee's hearings. He has attached to his most recent request a list, which he has denominated a provisional list, of twenty-four Department of Justice attorneys and Federal Bureau of Investigation officials and agents. The list is taken from a list of provisional witnesses that Judge Hastings had submitted last year to a subcommittee of the House Committee on the Judiciary.

The committee knows of no precedent for the pretrial examination of witnesses in connection with a Senate impeachment trial. Nevertheless, the committee will give further consideration to Judge Hastings' request for depositions after receiving from him a statement that includes the following information: a list of proposed deponents; a proffer of the testimony he expects to elicit from each proposed deponent and the relevance of that testimony; whether the proposed deponent has testified or provided statements in prior proceedings and whether Judge Hastings has received or has had access to any transcripts or recorded statements; whether Judge Hastings has asked the proposed deponent to provide information voluntarily and, if he has, the response of the proposed deponent; and, if the committee provides for depositions but limits their number, what priorities Judge Hastings places among the depositions that he is requesting.

If Judge Hastings wishes to pursue his request for depositions, he should submit this statement by April 28, 1989.

It is the committee's hope and expectation that if either the House or Judge Hastings seeks an opportunity to obtain information from the Department of Justice, including the Federal Bureau of Information, that the Department and the Bureau will cooperate voluntarily to provide relevant information.





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Sixth, the parties have expressed an interest in the evidentiary principles that will govern these proceedings. The committee's task is to receive and report evidence to the Senate. The Senate reserves the power to determine the competency, relevancy, and materiality of the evidence received by the committee. The committee is not bound by the Federal Rules of Evidence, although those rules may provide some guidance to the committee. Members of the Senate sit both as judges of law and fact. Precise rules of evidence are not needed in an impeachment trial to protect jurors, lay triers of fact, from doubtful evidence. In the end, the task of members of the Senate will be to weigh the relevance and quality of the evidence.

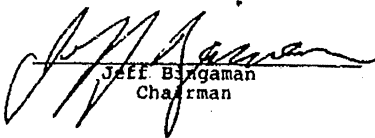
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Lastly, the parties should file final pretrial statements by a date that the committee will designate when it issues an order setting a date for the commencement of testimony. These statements should include a final list of

witnesses with a brief statement of the nature of each witness's proposed testimony. The parties should also submit marked exhibits that each proposes to offer. Further, each party should set forth to the committee the legal principles that each believes is applicable to each article of impeachment, or, if appropriately grouped, set of articles. Although the committee will not reach conclusions of law, it is important for the committee, in determining the relevancy of evidence, to know from the parties the legal theories upon which each is proceeding. We will provide more detailed instructions to the parties about the contents of these pretrial statements.

Deferred Matters

The committee is continuing to consider Judge Hastings' application for defense funds. The committee is also continuing to consider a schedule for its evidentiary hearings. The committee expects to issue an order or orders on these matters within a week.

  
Jeff Bingaman  
Chairman

Dated: April 14, 1989